IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

MFA.No. 689 of 1997(B)

(AGAINST THE AWARD IN OPMV.1845/1992 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, TRIVANDRUM DATED 29/09/95.
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APPELLANT: PETITIONER:

P.PURUSHOTHAMAN,
RAMAGIRI, T.C.1/47, ULLOOR WARD,
CHERUVAKKAL VILLAGE, TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:RESPONDENTS:
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1. **SAJEE GEORGE, PUTHENPURA VEEDU, PALANIRAPPA CHENGAMANADU P.O., KOTTARAKKARA (OWNER).**

2. **SAJEE GEORGE OF .....DO....DO.....**

3. **THE BRANCH MANAGER,**
NEW INDIA ASSURANCE CO., 2ND FLOOR,
KASTHURBA BUILDINGS, OPP.PRIVATE BUS STAND,
KOTTRAKKARA.

BY ADV. SRI.K.K.M.SHERIF for R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.689 OF 1997 (B)

Dated this the 16th day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant met with an accident by which his femur was fractured. He claimed compensation of Rs.7,00,000/-. He was the Principal of Shree Sankara Sanskrit Vidyapeetam. Tribunal assessed compensation at Rs.54,000/- including medical expenses etc. It is true that petitioner did not lost the job because of the accident. But at the same time, the disability he suffered is life long. Rs.30,000/- was calculated as compensation for disability and total amount assessed was Rs.54,000/-. But the tribunal found that accident occurred due to the negligence of the appellant/petitioner himself and therefore granted Rs.12,000/- only as compensation under Section 140 of the Motor Vehicles Act.

2. Question of negligence is seriously disputed in this

appeal. Claimant was examined as PW1. He stated that accident occurred due to the negligence of the driver of the vehicle. There is no evidence to contradict the oral evidence given by the petitioner. 2nd respondent driver was charge sheeted as can be seen from Ext.A4 charge sheet. Ext.A1 is the F.I.R. which shows that after the enquiry, the police officials found that 2nd respondent was negligent in driving the car. Mahazar would show that back of the motor cycle was hit by the car. But at the same time, it can be seen from Ext.A2 scene mahazar that road has width of 10 metres and accident was at 1.91 metres towards east from the western tar end where the width of the road was 10 metres. Claimant was riding towards south and the car was driven in the opposite direction. Claimant was turning towards west to enter the petrol pump. Car was coming in the right side. According to the tribunal, if the claimant was vigilant the accident would not have happened. Car was also driven in a rash speed and driver was not able to stop the car. On the facts of the case, we are of the opinion that both parties are equally negligent for the

accident. The accident occurred while the appellant was turning towards the right side negligently and the car driven by the 2nd respondent in a rash and negligent manner hit the motor cycle. Therefore, we apportion negligence as 50:50. If that be so, compensation payable is Rs.27,000/-. Already, Rs.12,000/- was awarded as compensation with interest by the tribunal. Balance amount is Rs.15,000/- and this amount should be deposited by the 3rd respondent Insurance company with 8% interest from the date of application till deposit. On deposit of th above amount, appellant is free to withdraw the same. Accordingly appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.689 OF 1997 (B)

J U D G M E N T

16th August, 2007